

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 ABMAN GLASTER,
6 Plaintiff,
7
8 vs.
9 7 ELEVEN., *et al.*,
10 Defendants.

2:19-cv-00842-GMN-VCF

REPORT AND RECOMMENDATION

AMENDED COMPLAINT SCREENING [ECF No. 5]

11 Before the Court is Plaintiff Abman Glaster's Amended Complaint. (ECF No. 5). For the reasons
12 discussed below, Plaintiff's Amended Complaint should be dismissed with prejudice.

13 **BACKGROUND**

14 On May 16, 2019, Plaintiff filed an application to proceed *in forma pauperis* and complaint. (ECF
15 Nos. 1, 1-1). The complaint brought a 42 U.S.C. § 1983 civil rights claim against the owners and
16 employees of two 7 Elevens and a Golden Day Adult Day Care. (ECF No. 4 at 1). The Court granted the
17 application to proceed *in forma pauperis* and dismissed the complaint with leave to amend, finding that
18 Plaintiff "fails to state how any of the Defendants, apparently private individuals and entities, have acted
19 under the color of state law." (ECF No. 3 at 2-3).

20 On February 1, 2017, Plaintiff filed his First Amended Complaint. (ECF No. 5). It again attempts
21 to bring a 42 U.S.C. § 1983 claim against the employee and owners of a 7 Eleven. (*Id* at 1-3). Plaintiff
22 asserts 7 Eleven has a discriminatory policy against homeless people. (*Id.* at 4-5).

ANALYSIS

Under 28 U.S.C. § 1915(e), upon granting a request to proceed *in forma pauperis*, a court must screen a complaint. The Court is given the authority to dismiss a case if the action is legally frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). “A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and citation omitted). All material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). “A district court should not dismiss a pro se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir.1988)).

A § 1983 claim must be brought against a person acting under color of state law. 42 U.S.C §1983. Plaintiff again fails to state how Defendants, private individuals and entities with no apparent connection to the government, have acted under the color of state law. Plaintiff has failed to state a claim upon which relief may be granted. Because allowing an additional opportunity to amend the complaint would be futile, the complaint should be dismissed with prejudice.

ACCORDINGLY,

IT IS RECOMMENDED that Plaintiff’s Amended Complaint (ECF No. 5) be DISMISSED WITH PREJUDICE and the case be closed.

NOTICE


Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified

1 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections
2 within the specified time and (2) failure to properly address and brief the objectionable issues waives the
3 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.
4 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,
5 454 (9th Cir. 1983).

6 Pursuant to LR IA 3-1, the Plaintiff must immediately file written notification with the court of
7 any change of address. The notification must include proof of service upon each opposing party of the
8 party's attorney. Failure to comply with this Rule may result in dismissal of the action.

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11 IT IS SO RECOMMENDED.

12 DATED this 16th day of July, 2019.

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14 CAM FERENBACH
15 UNITED STATES MAGISTRATE JUDGE
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